

Robert C. Ekstrand (N.C. State Bar No. 26673)

Pro Hac Vice Application Pending

EKSTRAND & EKSTRAND LLP

110 Swift Avenue, Second Floor

Durham, North Carolina 27705

Telephone: 919-416-4590

Facsimile: 919-214-3014

E-mail: rce@ninthstreetlaw.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
for the
DISTRICT OF ARIZONA

COURTNEY CONNOR,

PLAINTIFF,

VS.

ARIZONA STATE UNIVERSITY AND
ARIZONA BOARD OF REGENTS,

DEFENDANTS

Case No.: 2:23-CV-_____

COMPLAINT

THE PLAINTIFF, COURTNEY CONNOR, for her complaint against Arizona State University and the Arizona Board of Regents, alleges upon information and belief the following:

THE PARTIES

1. Plaintiff, Courtney Connor, is a citizen and resident of Arizona.
2. Defendant Arizona State University (ASU) is a federally funded educational institution in Maricopa County, Arizona.

1 3. At all times applicable to this Complaint, ASU, its agents, and
2 employees took various actions that deprived Ms. Connor of her federally
3 protected rights. Defendants provide programs and activities receiving federal
4 financial assistance acting under the color of state and federal law. ASU, a non-
5 jural entity controlled and administered by Defendant Arizona Board of Regents
6 (“ABOR”), appears here in name only for frame of reference as the conduct
7 complained of herein was engaged in by employees of ASU, and the claims
8 asserted against ASU are directed at it through ABOR in this suit as stated below.

9 4. At all times relevant, Defendant, Arizona Board of Regents,
10 (hereinafter “ABOR”) is a body corporate of the State of Arizona, created by
11 statute and having jurisdiction and control over public universities in the State of
12 Arizona including ASU. ABOR has the capacity to sue and be sued pursuant to
13 A.R.S. §15-1625(B). ABOR was, during the relevant time, Ms. Connor’s
14 “employer” as that term is used in 42 U.S.C. §2000e(b) and operates an “education
15 program or activity receiving Federal financial assistance” as that phrase is used in
16 20 U.S.C §1681(a).

18 **JURISDICTION AND VENUE**

19 5. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. § 1331 because Plaintiff’s claims arise under federal law, including Title
21 VII of the Civil Rights Act of 1964 (“Title VII”), Title IX of the Education
22 Amendments of 1972 (“Title IX”) and 28 U.S.C. § 1367(a) confers supplemental
23 jurisdiction over Ms. Connor’s state law claims.

24 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
25 a substantial part of the acts and omissions giving rise to Ms. Connor’s claims
26 occurred in this District.
27
28

1 13. ASU had decided to create a women's lacrosse program in part to
2 remedy its failure to comply with Title IX's requirement of gender equity in its
3 athletics program.

4 14. ASU induced Ms. Connor to leave her successful broadcasting career by
5 promising her that the women's program would be supported by the University in
6 the same way that its other athletic programs were supported.

7 15. ASU would not keep these promises, but, in reliance upon them, Ms.
8 Connor accepted ASU's offer.

9 16. Ms. Connor's employment with ASU began in late 2015, and she was
10 assigned to report to Senior Associate Athletics Director Scottie Graham.

11 17. Early in her employment, Ms. Connor was interviewed by NCAA
12 investigators who were investigating complaints of gender inequity in ASU's
13 athletics programs.

14 18. Ms. Connor answered the NCAA investigators' questions truthfully, but
15 in many cases revealed gender inequity in the resources ASU provided to her
16 womens' lacrosse program including but not limited to disparate allocation of
17 budget, equipment, staff allocation, travel, facilities, staff, and salary.

18 19. Ms. Connor's supervisors, including Mr. Graham, made it clear to Ms.
19 Connor that they were angered by her truthful disclosures to the NCAA
20 investigators and, because of her truthful reports of gender inequity in violation of
21 Title IX in ASU's athletics department, they took steps to make the gender
22 inequities more entrenched and created a hostile work environment for Ms.
23 Connor.

24 20. Ms. Connor continued to complain about the University's violations of
25 Title IX in its athletics department and, when she was subjected to sexual
26 harassment in violation of Title VII, she complained to the University's officials
27
28

1 about that and the hostile work environment it created. Ms. Connor's complaints
2 included, for example:

3 21. Ms. Connor engaged in protected activity under Title VII by reporting,
4 opposing and complaining of ASU's employment practices that she reasonably
5 believed were unlawful employment practices prohibited under Title VII,
6 including, for example:

- 7 a. Ms. Connor's male supervisor's persistent sexual overtures in the
8 workplace, including but not limited to his comment to Ms. Connor
9 that she "makes [his] dick hard";
- 10 b. Ms. Connor's male supervisor's persistent sexual comments to Ms.
11 Connor about his sexual arousal and gratification from seeing her and
12 other female employees in the ASU athletic department wearing form-
13 fitting clothing, citing particular body parts of Ms. Connor's female
14 colleagues;
- 15 c. The University's Athletics Director's and Ms. Connor's male
16 supervisor's approval of, participation in, and ratification of the
17 severe, pervasive sexual harassment (sexual touching, comments, and
18 propositioning) engaged in by Mr. Ware; including their requirement
19 that Ms. Connor appear in the suites at athletic events that Mr. Ware
20 would be in attendance so that he could gratify his sexual desires with
21 her and subject her to further sexual harassment and sexual assault;
- 22 d. Gross disparities between the resources the University afforded to
23 Defendants' men's and women's athletic programs -- and between
24 male and female head coaches -- including the facilities, equipment,
25 training, staff, travel, lodging, food, promotion and other resources
26 that were made available to female and male coaches and teams; and
27
28

- e. Responding truthfully about Defendants' failures to provide essential resources and support to her women's lacrosse program to NCAA investigators who interviewed her in connection with an NCAA investigation into Defendants' failure to meet Title IX gender equity requirements.

22. Immediately after and because of Ms. Connor's complaints of gender inequity, gender discrimination, sexual harassment, and the hostile environment engendered by it in violation of Title VII and Title IX, ASU subjected Ms. Connor to a campaign of retaliatory adverse actions, culminating in her termination without cause on or about April 29, 2019.

23. On May 3, 2019, Ms. Connor appealed and reported her termination to ASU's human resources officer as discriminatory and in retaliation against her for engaging in protected conduct.

24. ASU responded to Ms. Connor's May 3, 2019 complaint of discrimination, harassment, and retaliation in the same way it responded to her prior reports of discrimination, harassment, and retaliation: with deliberate indifference. For example:

- a. The University failed to take prompt action on Ms. Connor's complaint.
- b. The University failed to appropriately investigate or collect relevant evidence supporting Ms. Connor's allegations in the University's possession, custody, or control or otherwise readily available to the University.
- c. The University failed to make a determination on Ms. Connor's complaint until March 5, 2020 — over 10 months after Ms. Connor made her complaint.

1 d. The University's determination amounted to little more than the
2 conclusory assertion that "no violations of ACD 401: Prohibition on
3 Discrimination, Harassment, and Retaliation" (the ASU policy that
4 incorporates the prohibitions of Title VII and Title IX) occurred in
5 connection with Ms. Connor's employment.

6 e. The University's determination of "no violation" in connection with
7 Ms. Connor's employment was contradicted by the University's prior
8 determination that a prominent ASU athletics booster, Bart Wear, had
9 serially sexually harassed ASU employees, their spouses, and others
10 and Ms. Connor was one of them.

11 25. The Defendants' March 5, 2020 determination of Ms. Connor's
12 complaint of retaliatory discharge was a final decision made by Defendants'
13 employees with final policymaking authority over Ms. Connor's employment and
14 Defendant's employees unlawful conduct. The Defendants' March 5, 2020
15 "determination" condoned and ratified the discrimination, harassment, and
16 retaliation Ms. Connor was subjected to during her employment at the University,
17 up to and including the retaliatory termination of Ms. Connor's employment.

18 26. Ms. Connor timely filed a complaint of discrimination and retaliation in
19 violation of Title VII to the Equal Employment Opportunity Commission and fully
20 participated in the EEOC's procedures until she finally received the EEOC's
21 Notice of Suit Rights.
22

23 **RESPONDEAT SUPERIOR**

24

25 27. All of the conduct complained of herein was engaged in by individuals
26 acting in their capacity as employees and agents of ASU and in furtherance of
27 ASU's interests; and such conduct was participated in, authorized, condoned,
28 and/or ratified by ASU employees with supervisory and final policymaking

1 authority over the employees and their conduct. As a result, all of the conduct
 2 complained of herein is imputed to ASU and the ABOR pursuant to the doctrine of
 3 *respondeat superior*. Therefore, ASU and the ABOR are liable for all of the
 4 damages Ms. Connor suffered as a result of the conduct giving rise to the following
 5 claims.

7 **FIRST CAUSE OF ACTION**

8 Retaliation in Violation of Title VII (42 USC § 2000e, *et seq.*)
 9 (Against All Defendants)

10 28. ASU and ABOR are employers as that term is used in Title VII of the
 11 Civil Rights Act of 1964, 42 USC §2000e(b).

12 29. Title VII prohibits retaliation against any person by discriminating,
 13 threatening, coercing, or intimidating for the purpose of interfering with any right
 14 or privilege secured by Title VII or because s/he has made a complaint, testified,
 15 assisted, or participated in any manner in an investigation, proceeding or hearing
 16 concerning a report of employment practices that are made unlawful by Title VII.

17 30. Ms. Connor made numerous reports and complaints of unlawful
 18 employment practices that are made unlawful by Title VII to University officials,
 19 and Ms. Connor reasonably believed them to be unlawful employment practices
 20 under Title VII. As such, Ms. Connor's complaints and reports were protected
 21 conduct under Title VII.

22 31. Ms. Connor engaged in protected activity under Title VII by reporting,
 23 opposing and complaining of ASU's employment practices that she reasonably
 24 believed were unlawful employment practices prohibited under Title VII,
 25 including, for example:

- 26 a. Ms. Connor's male supervisor's persistent sexual overtures in the
 27 workplace, including but not limited to his comment to Ms. Connor
 28 that she "makes [his] dick hard."

1 b. Ms. Connor's male supervisor's persistent sexual comments to Ms.
2 Connor about his sexual arousal and gratification from seeing her and
3 other female employees in the ASU athletic department wearing form-
4 fitting clothing, citing particular body parts of Ms. Connor's female
5 colleagues.

6 c. The University's Athletics Director and Ms. Connor's male supervisor
7 approved of, participated in and ratified the severe, pervasive sexual
8 harassment engaged in by Mr. Ware; including their sexual touching
9 of Ms. Connor, comments to and about Ms. Connor, propositioning of
10 Ms. Connor, and requiring Ms. Connor appear in the suites at athletic
11 events that Mr. Ware would be in attendance so that he could gratify
12 his sexual desires with her and subject her to further sexual
13 harassment and sexual assault.
14

15 32. Because of and immediately after Ms. Connor engaged in activities
16 protected by Title VI, Defendants employees began a campaign of taking adverse
17 employment actions against Ms. Connor, which continued throughout the
18 remainder of her employment, culminating the retaliatory termination of Ms.
19 Connor. Defendants' employees with final policymaking authority over the
20 decision participated in and ratified the retaliatory termination of Ms. Connor.

21 33. Specifically, Defendants ratified and condoned their employees'
22 retaliatory conduct and retaliatory discharge in their March 5, 2020 determination
23 that their employees' retaliatory conduct constituted no violation of Title VII or
24 ASU's "Prohibition on Discrimination, Harassment, and Retaliation" policy (the
25 ASU policy that incorporates the prohibitions of Title VII) occurred in connection
26 with Ms. Connor's employment.

27 34. Defendants' retaliatory conduct persisted throughout Ms. Connor's
28 remaining employment up to and including the May 5, 2020 determination in

1 which Defendants' employees with final policymaking authority approved,
2 condoned, and ratified it.

3 35. Defendants' campaign of adverse treatment of Ms. Connor because of
4 her protected activity and the approval and ratification of it by Defendants' senior
5 officials with policymaking authority over such decisions is reasonably likely to
6 deter other employees from engaging in protected activity.

7 36. As a proximate result of Defendants' unlawful conduct, Ms. Connor
8 suffered and continues to suffer irreparable injury.

9 37. As a further proximate result of Defendant's unlawful conduct, Ms.
10 Connor suffered damages and other compensable harms to be shown at trial,
11 including emotional distress, past and future lost wages and benefits, the costs of
12 bringing Defendants' unlawful conduct to the attention of Defendants' officials
13 with final policymaking authority over the university's compliance with Title IX
14 and Defendants' federal regulators, and the costs of bringing this action.

15 38. Plaintiff is therefore entitled to equitable relief and damages in an
16 amount to be determined by a jury.
17

18 **SECOND CAUSE OF ACTION**

19 **Retaliation in Violation of Title IX (20 USC § 1681)** 20 **(Against All Defendants)**

21 39. Plaintiff incorporates by reference all of the allegations set out in this
22 complaint as though fully set forth here.

23 40. ASU and ABOR own and operate education programs receiving Federal
24 financial assistance as that phrase is used in Title IX of the Education Amendments
25 of 1972, 20 U.S.C. § 1681.

26 41. Title IX and its implementing regulations prohibit retaliation against any
27 person by discriminating, threatening, coercing, or intimidating for the purpose of
28 interfering with any right or privilege secured by Title IX or because s/he has made

1 a complaint, testified, assisted, or participated in any manner in an investigation,
2 proceeding or hearing concerning a report of sex discrimination, including gender
3 inequality, in education programs receiving Federal financial assistance. 20 U.S.C.
4 § 1681; 34 C.F.R. § 100.7(e).

5 42. Ms. Connor made numerous reports and complaints of sex
6 discrimination and gender inequality in Defendants' educational programs and
7 activities to University officials and NCAA officials investigating complaints of
8 gender inequities in Defendants' athletics program, including, for example:

- 9 a. Gross disparities between the resources the University afforded to
10 Defendants' men's and women's athletic programs, including
11 facilities, equipment, training, staff, travel, lodging, food, promotion
12 and other resources.
- 13 b. Responding truthfully about Defendants' failures to provide essential
14 resources and support to her women's lacrosse program to NCAA
15 investigators who interviewed her in connection with an NCAA
16 investigation into Defendants' failure to meet Title IX gender equity
17 requirements.
- 18 c. Ms. Connor's male supervisor's persistent sexual overtures in the
19 workplace, including but not limited to his comment to Ms. Connor
20 that she "makes [his] dick hard."
- 21 d. Ms. Connor's male supervisor's persistent sexual comments to Ms.
22 Connor about his sexual arousal and gratification from seeing her and
23 other female employees in the ASU athletic department wearing form-
24 fitting clothing, citing particular body parts of Ms. Connor's female
25 colleagues.
- 26 e. The University's Athletics Director's and Ms. Connor's male
27 supervisor's approval of, participation in, and ratification of the
28

1 severe, pervasive sexual harassment (sexual touching, comments, and
2 propositioning) engaged in by Mr. Ware; including their requirement
3 that Ms. Connor appear in the suites at athletic events that Mr. Ware
4 would be in attendance so that he could gratify his sexual desires with
5 her and subject her to further sexual harassment and sexual assault.

6 43. The sex discrimination and gender inequality in Defendants' educational
7 programs and activities that Ms. Connor reported and complained of to the
8 Defendants constituted violations of Title IX and Ms. Connor reasonably believed
9 them to be violations of Title IX. As such, Ms. Connor's complaints and reports
10 were protected conduct under Title IX.

11 44. Immediately after and because of Ms. Connor's protected conduct,
12 Defendants immediately began a campaign of retaliation against Ms. Connor by
13 taking adverse actions against her.

14 45. Defendants' retaliatory conduct persisted throughout Ms. Connor's
15 remaining employment up to and including the Defendants' March 5, 2020
16 determination of Ms. Connor's complaint of retaliation in which Defendants'
17 employees with final policymaking authority approved, condoned, and ratified it.

18 46. Defendants acted intentionally in retaliating against Ms. Connor because
19 she reported illegal sexual discrimination in the form of sexual harassment and
20 gender inequality in the Defendants' educational programs and activities.

21 47. Defendants' campaign of retaliation against Ms. Connor is reasonably
22 likely to deter other employees from engaging in protected activity.

23 48. As a proximate result of Defendants' unlawful conduct, Ms. Connor
24 suffered and continues to suffer irreparable injury.

25 49. As a further proximate result of Defendant's unlawful conduct, Ms.
26 Connor suffered damages and other compensable harms to be shown at trial,
27 including emotional distress, past and future lost wages and benefits, the costs of
28

bringing Defendants' unlawful conduct to the attention of Defendants' officials with final policymaking authority over the university's compliance with Title IX and Defendants' federal regulators, and the costs of bringing this action.

50. Plaintiff is therefore entitled to equitable relief and damages in an amount to be determined by a jury.

THIRD CAUSE OF ACTION

Wrongful Termination (Against All Defendants)

51. Plaintiff incorporates by reference all of the allegations set out in this complaint as though fully set forth here.

52. The Arizona Employment Protection Act (ARS § 23-1501(A)(3)(c)) prohibits actions in retaliation for an employee's disclosure that the employee has information or reasonably believes that the employer or an employee of the employer violated or will violate a state statute or the Arizona Constitution.

53. The Arizona Civil Rights Act (ARS §§ 41-1461 – 41-1468) prohibits "an employer" from engaging in discrimination, harassment and retaliation based on sex.

54. Arizona State University is "an employer" as that term is used in the ACRA. ARS § 41-1461(7)(a).

55. The Arizona Board of Regents is "an employer" as that term is used in the ACRA. ARS § 41-1465(7)(a).

56. Ms. Connor was "an employee" of Arizona State University as that term is used in the ACRA. ARS § 41-1461(6)(a).

57. Ms. Connor was an "an employee" of the Arizona Board of Regents as that term is used in the ACRA. ARS § 41-1461(6)(a).

58. As alleged herein, Ms. Connor reported and complained of discrimination, harassment, and retaliation based on sex and gross gender

1 inequities in the Defendants' workplace and in the Defendants' educational
2 programs and activities as alleged more particularly above.

3 59. Defendants were aware of the discrimination, harassment, retaliation,
4 and gross gender inequities reported by Ms. Connor.

5 60. Yet, Defendants failed and refused to promptly investigate, take any
6 corrective action, or respond appropriately to address the discrimination,
7 harassment, retaliation, and gross gender inequity in Defendants' workplace and in
8 their educational programs and activities.

9 61. Instead, Defendants retaliated against Ms. Connor for making her reports
10 and complaints by waging a persistent, severe, and pervasive campaign of adverse
11 treatment, adverse employment actions, and other retaliatory conduct.

12 62. Defendants likewise retaliated against another employee who, like Ms.
13 Connor, made reports and complaints of severe and pervasive sexual harassment in
14 Defendants' workplace and educational programs and activities. Specifically,
15 Defendants responded to David Cohen's reports and complaints of severe and
16 pervasive sexual harassment by placing Mr. Cohen on administrative leave,
17 changing the terms and conditions of his employment, stripping him of benefits,
18 and terminating him, all in violation of the ACRA. Defendants' unlawful
19 retaliation against employees for reporting Defendants' discrimination based on
20 sex was widespread, severe, and pervasive.

21 63. The wrongful termination of Ms. Connor and Defendants' ratification of
22 it were willful and malicious.

23 64. As a direct and proximate result of Defendants' wrongful termination in
24 violation of the public policy of this State, Ms. Connor has suffered damages in an
25 amount to be determined by a jury.

26 65. Further, due to the willful and malicious conduct of the Defendants,
27 Plaintiff is entitled to punitive damages in an amount to be determined by a jury.
28

PRAYER FOR RELIEF

66. Plaintiff demands entry of judgment against Defendants awarding Plaintiff:

- a. A declaration that Defendants violated Ms. Connor's rights under federal and state law;
- b. Lost past and future wages, bonuses, compensation and other employee benefits;
- c. Compensatory damages in an amount to be determined by a jury;
- d. Reasonable attorneys' fees and costs to the extent allowed by law;
- e. Pre-judgment and post-judgment interest to the extent allowed by law; and
- f. All such other and further relief at law or in equity as the Court deems proper.

Respectfully submitted on this the 3rd day of April 2023.

/s/ Robert C. Ekstrand

Robert C. Ekstrand

N.C. Bar No. 26673

Motion for Admission Pro Hac Vice forthcoming

EKSTRAND & EKSTRAND LLP

110 Swift Avenue, Second Floor

Durham, North Carolina 27705

Tel. (919) 416-4590

rce@ninthstreetlaw.com

Counsel for Plaintiff, Courtney Connor